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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,597	03/26/2001	Motoki Nakade	450100-03084	7826
20999 7590 04/14/2010 FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151				
EXAMINER JOHNS, CHRISTOPHER C				
ART UNIT		PAPER NUMBER		
3621				
MAIL DATE		DELIVERY MODE		
04/14/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/817,597

**Applicant(s)**

NAKADE ET AL.

**Examiner**

Christopher C. Johns

**Art Unit**

3621

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 7, 8 and 10-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 8 and 10-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/02)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Acknowledgements***

1. This Office Action is given Paper No. 20100409 for reference purposes only.
2. This Office Action is in response to the Request for Continued Examination, filed by Applicants on 9 March 2010.
3. Claims 1-4, 7, 8, and 10-22 pending.
4. Claims 1-4, 7, 8, and 10-22 have been examined.

### ***Continued Examination Under 37 CFR 1.114***

5. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9 March 2010 has been entered.
6. This case has had five (5) Requests for Continued Examination.

### ***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-4, 7, 8, 10-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Independent claim 1's recitation of "according to a respective one from a plurality of superposing methods" (page 3, lines 8-9) renders the claim indefinite because a person having ordinary skill in the art would not understand what the method is chosen "respective" to. This renders the claim indefinite because a person having ordinary skill in the art would not understand how to implement the claimed invention.

10. Independent claim 14 recites a similar phrase and is therefore rejected for similar reasons.

11. Dependent claims 2-4, 7, 8, 10-13, and 15-22 are rejected for at least their dependency upon claims 1 or 14.

12. The Examiner finds that because the claims are indefinite under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, it is impossible to properly construe claim scope at this time. However, in accordance with MPEP §2173.06 and the USPTO's policy of trying to advance prosecution by providing art rejections even though claims may be indefinite, the claims are construed and the prior art is applied as much as practically possible.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-4, 7, 8, 12-19, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO/98/28908 ("Crampton") in view of U.S. Patent 5,850,222 ("Cone").

15. As per claim 1, Crampton discloses:

16. connecting a plurality of communication terminals (figure 1, reference 6; and claim 25 - "server") to each other and transmitting signals between said terminals (claim 25, "server on the internet to which the kiosk transmits the Avatar");

17. transmitting audio signals (page 6, ¶6 - "sound recording...may be used to capture the voice of the person as he makes sounds") and image signals (claim 25, "kiosk transmits the Avatar") between said plurality of communication terminal apparatus (claim 25, "server on the internet to which the kiosk transmits the Avatar");

18. detecting at least the first user's face (page 9, ¶2 - "head, nose, ears"), hands (page 9, ¶2 - "hands"), outwear (page 10, ¶2 - "simple image processing algorithms can be used to combine the silhouettes reliably"; the combination of both silhouettes is done to remove the clothing from the avatar data; as such, the clothing is detected) and a position of the first user's face (page 5, ¶1 - "used to locate the head"), hands (page 5, ¶1 - "hands and fingers are roughly in the same plane P"; this is done to locate and image the hands), and outwear (page 10, ¶2 - "An image of the person [3] is taken with camera [63] and background [72] with LEDs [70] illuminated and LEDs

[71] not illuminated”; this locates the person’s clothing relative to the background, since the background is subtracted from the clothing image) by matching feature points (page 8, ¶4 - “3D Points”) extracted from the first image data according to luminance and color (page 8, ¶2 - “16 colour cameras are used with 16 flash lights to record the colour of the person”) of the first image data with a database (page 9, ¶3 - “known posture”);

19. wherein an environment (computers inherently have operating systems and programs, because this is how computers run and interact with the hardware that they possess) is supplied.

20. Crampton does not explicitly disclose:

21. generating third image data by superposing first image data transmitted from a first communications terminal apparatus utilized by a first user with second image data of one or more products;

22. according to a respective one from a plurality of superposing methods that comprise replacing a prescribed area of the first image data with the second image data and blending the first image data and the second image data at a prescribed ratio;

23. transmitting the third image data to a second communication terminal apparatus utilized by a second user;

24. wherein the prescribed area in the first image data is determined based on the feature points of the first image data and a usage of the one or more products;

25. environment for performing transactions of the one or more products is displayed to the one of said plurality of communication terminal apparatuses to which the detailed information is supplied;

26. wherein detailed information of the one or more products is supplied to the plurality of communication terminal apparatuses in response to a demand from the plurality of communication terminal apparatuses.

27. Cone teaches:

28. generating third image data (claim 24, “two-dimensional shape”) by superposing (claim 24, “overlying”) first image data (claim 24, “three-dimensional shape”) transmitted from a first communications terminal apparatus utilized by a first user with second image data of one or more products (claim 24, “a standard object”);

29. according to a respective one from a plurality of superposing methods (figure 14, reference 1408 - “transform the area to corresponding point”) that comprise replacing a prescribed area of the first image data with the second image data and blending the first image data and the second image data at a prescribed ratio (the garment data is placed over the body data at a ratio of 100%, i.e. it covers it entirely);

30. transmitting the third image data to a second communication terminal apparatus (column 14, lines 37-40 - “electronically transfer and display a person’s figure”) utilized by a second user (all computers are inherently directly or indirectly operated by a user, because this is the purpose of computers; while a user may not sit at a computer (e.g. a web server), said computer serves a user in some way (e.g. by serving a web page));

31. wherein the prescribed area in the first image data is determined based on the feature points of the first image data (figure 3, reference 302A, 303A, 304A, 305A) and a usage of the one or more products (column 6, lines 57-61 - “each garment is assigned a body area”);

32. environment (computers inherently have operating systems and programs, because this is how computers run and interact with the hardware that they possess) for performing transactions of the one or more products is displayed to the one of said plurality of communication terminal apparatuses to which the detailed information is supplied (column 1, lines 33-44 - “some people purchase clothing through alternate means...it would be desirable to have a technique in which a person could approve the appearance and fitting of a garment without having to actually try on the garment”);

33. wherein detailed information (column 2, lines 7-12 - “a computer image of the garment to the person’s figure”) of the one or more products is supplied to the plurality of communication terminal apparatuses in response to a demand from the plurality of communication terminal apparatuses (column 2, lines 7-12 - “a computer image of the garment to the person’s figure”).

34. Cone teaches tailoring a garment to a person’s figure, based on a 3D model of the person, in order to allow said person to approve of the “appearance and fitting of a garment without having to actually try on the garment” (column 1, lines 40-44). This creates a “fast and cost-effective manner” (column 2, lines 7-12) of selecting clothing. This, in turn, creates a more profitable system for its creators, because users would be more likely to purchase and use a system that is “fast and cost-effective” (column 2, lines 7-12).

35. Therefore, it would have been obvious to a person having ordinary skill in the art to include in Crampton the clothing-rendering system as taught by Cone, since the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately. A person having ordinary skill in the art would have recognized that the results of the combination were predictable, as well as



advantageous because it would create a “fast and cost-effective” method of fitting a garment to a user’s specifications, in order to sell it to said user. A person having ordinary skill in the art would also see it as advantageous because it would create a more profitable system.

36. Claim 14 is substantially similar to claim 1, and is therefore similarly rejected.

37. As per claim 2, Crampton in view of Cone discloses as above, and further discloses:

38. wherein said one or more products are selected by said first user of said one of said plurality of communication terminal apparatuses (Cone, column 3, lines 33-36 - “selected garment”).

39. As per claim 3, Crampton in view of Cone discloses as above, and further discloses:

40. first image data includes an image from said first user (claim 25, “Avatar”).

41. As per claim 4, Crampton in view of Cone discloses as above, and further discloses:

42. first image data includes a real-time moving image signal (page 6, ¶7 - “capture motion such as walking”).

43. As per claim 7, Crampton in view of Cone discloses as above, and further discloses:

44. first image data is superposed with said second image data of the one or more products so that the second image data has a relation with an object included in said first image data (Cone, column 6, lines 57-61 - “each garment is assigned a body area”).

45. As per claims 8 and 18, Crampton in view of Cone discloses as above, and further discloses:

46. first image data is superposed with second image data so that third image data includes an image in which said first user uses the one or more products (Cone, column 2, lines 7-11 -0 “image of the person’s figure wearing the garment”).

47. As per claim 12, Crampton in view of Cone discloses as above, and further discloses:

48. third image data is selectively transmitted to a communication terminal apparatus (column 14, lines 33-35 - “electronically transfer...a person’s figure”).

49. As per claims 13 and 19, Crampton in view of Cone discloses as above, and further discloses:

50. products included in said third image data are changed in response to a demand from the second user (Cone, column 3, lines 33-36 - “selected garment”; the user may select another garment in another run of the method).

51. As per claim 15, Crampton in view of Cone discloses as above, and further discloses:

52. recording means for recording said second image data (Cone, figure 4, reference 403 - garment database **403** stores garment data (and therefore has “garment data” stored to it));

53. second image data superposed with first image data from said one of said plurality of apparatuses (Cone, figure 14, reference 1408 - “transform the area to corresponding point”);

54. superposing means generates third image data by superposing second image data with first image data (Cone, figure 14, reference 1408 - “transform the area to corresponding point”).

55. As per claim 16, Crampton in view of Cone discloses as above, and further discloses:

56. recording means for recording information including second image data of said one or more products to be advertised (Cone, figure 4, reference 405 - tailor garment procedure **405** operates on the tailored garment);

57. superposing means generates third image data by superposing second image data with first image data (Cone, figure 14, reference 1408 - “transform the area to corresponding point”; this process uses the garments tailored through the “tailor garment procedure” **405**).

58. As per claim 17, Crampton in view of Cone discloses as above, and further discloses:

59. connecting means adapted to transmit real-time moving image data among said apparatuses (page 6, ¶7 - “capture motion such as walking”; said motion makes up a portion of the Avatar data, and is therefore sent with the rest of the Avatar data).

60. As per claim 22, Crampton in view of Cone discloses as above, and further discloses:

61. transmitting means transmits information of more detailed information of said products (column 2, lines 7-12 - “a computer image of the garment to the person’s figure”) to said one of said apparatuses that transmitted the superposed image signal (column 2, lines 7-12 - “a computer image of the garment to the person’s figure”).

62. Claims 10, 11, 20, and 21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Crampton in view of Cone, further in view of “ValuePay.com - Get Paid to Use Piggy!, A Unique Internet Service Launched” (“Piggy”).

63. As per claims 10, 11, 20, and 21, Crampton in view of Cone discloses as above, but does not explicitly disclose:

64. compensation is paid to first user, determined based on a number of times the transmission is performed by the first user;

65. compensation is paid by money.

66. Piggy teaches:

67. compensation is paid to first user, determined based on a number of times the transmission is performed by the first user (¶1 - “ValuePay.com...will pay you every time you are online”);

68. compensation is paid by money (¶4 - “you can potentially start earning up to \$1.00 per hour...up to \$3.00 per hour”).

69. Piggy teaches paying users to use a service (ValuePay.Com) in order to send advertisements to users in a targeted manner. This creates a system where users are compensated for their time, making users more likely to use the system. This, in turn, leads to a more profitable system for its owners, because when users use the system more, more advertisements are shown, which increase advertisement revenue.

70. Therefore, it would have been obvious to a person having ordinary skill in the art to include in Crampton and Cone the advertising system as taught by Piggy, since the claimed invention is merely a combination of old elements, and in the combination, each element merely

would have performed the same function as it did separately. A person having ordinary skill in the art would have recognized that the results of the combination were predictable, as well as advantageous because it would create a more profitable system for its owners, as well as a system that compensated users for using the system (making them more likely to use the system in the first place).

### ***Claim Interpretation***

71. The Examiner hereby adopts the following definitions under the broadest reasonable interpretation standard. In accordance with *In re Morris*, 127 F.3d 1048, 1056, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997), the Examiner points to these other sources to support his interpretation of the claims.<sup>1</sup> Additionally, these definitions are only a guide to claim terminology since claim terms must be interpreted in context of the surrounding claim language. Finally, the following list is not intended to be exhaustive in any way:

72. ***Adapt***: “to make fit (as for a specific or new use or situation) often by modification.” Webster’s Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield, M.A. 1986.

73. ***Data***: “a representation of facts, concepts, or instructions in a manner suitable for communication, interpretation, or processing by humans or by automatic means. Note: ‘Data’ is plural for datum, but is often used as a collective noun, as in ‘The data is in this file.’” IEEE 100 The Authoritative Dictionary of IEEE Standards Terms, Seventh Edition, IEEE Press, Dec. 2000.

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<sup>1</sup> While most definitions are cited because these terms are found in the claims, the Examiner has provided additional definitions to help interpret words, phrases, or concepts found in the definitions themselves or in the prior art.

74. **Database** "a collection of data fundamental to a system." IEEE 100 The Authoritative Dictionary of IEEE Standards Terms, Seventh Edition, IEEE Press, Dec. 2000.
75. **For:** "1 a -- used as a function word to indicate purpose... b -- used as a function word to indicate an intended goal" Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield MA, 1986.
76. **To:** "2a -- used as a function word to indicate purpose, intention, tendency, result, or end." Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield MA, 1986.

#### ***Response to Arguments***

77. Applicants' arguments with respect to the claims have been considered but are moot in view of the new ground of rejection. They argue limitations that were not previously in the claims – as they have been fully addressed in this Office Action, the arguments are overcome.

#### ***Conclusion***

78. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher C. Johns whose telephone number is (571)270-3462. The examiner can normally be reached from Monday through Friday from 9am to 5pm.
79. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer, can be reached on (571) 272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

80. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Christopher C Johns/  
Examiner, Art Unit 3621

/EVENS J. AUGUSTIN/  
Primary Examiner, Art Unit 3621